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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,122	08/10/2001	J. Guy Breitenbacher	ORT-1478	6262

27777            7590            10/23/2002  
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EXAMINER	
BERNHARDT, EMILY B	
ART UNIT	PAPER NUMBER

1624  
DATE MAILED: 10/23/2002 C

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/928,122</b>	Applicant(s) <b>BREITENBUCHER et al.</b>
	Examiner <b>Emily Bernhardt</b>	Art Unit <b>1624</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on \_\_\_\_\_.
  - 2a)  This action is FINAL.      2b)  This action is non-final.
  - 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.
- Disposition of Claims**
- 4)  Claim(s) 1-50 is/are pending in the application.
  - 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
  - 5)  Claim(s) \_\_\_\_\_ is/are allowed.
  - 6)  Claim(s) \_\_\_\_\_ is/are rejected.
  - 7)  Claim(s) \_\_\_\_\_ is/are objected to.
  - 8)  Claims 1-50 are subject to restriction and/or election requirement.

#### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

- 15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_

Art Unit: 1624

**Restriction to one of the following inventions is required under 35**

**U.S.C. 121:**

- I. Claims 1-50 drawn to compounds,compositions and uses where n=1 and R5/R6 forms pyridine or carbocyclic ring and XYZ ring is monocyclic or further fused at W/R1, classified in class 544,subclasses such as 295,362 and others as determined by the nature of substituents permitted thereon, and class 514 subclasses 252.18,253.04,etc.**
- II. Claims 1-8,11-26,29-31,35,38,42-50, drawn to compounds,compositions and uses where n=1 and R5/R6 does not further fuse and XYZ is as defined in group I, classified in class 544 , subclasses such as 371,etc; class 514 subclass 254.05.**
- III. Claim 38, drawn to bipyrazinyl species (see for example 1st species in claim 38 and 4th one on p.147), classified in class 544, subclass 357.**
- IV. Claims 1-32,42-50, drawn to compounds,compositions and uses where n=1 not provided for by I-II above, classified in classes,**

Art Unit: 1624

subclasses as determined by the exact nature of fused rings  
permitted on either end of azine ring and substituents thereon.

V. Claims 1-32 and 42-50, drawn to compounds, compositions <sup>and</sup> ~~and~~ uses  
where n=2, classified in class 540, subclass 575; class 514  
subclass 218.

In addition to an election of one of the above groups, applicants are required to elect a single species embractive of said group. If IV or V is elected further restriction as was done for groups I-II at XYZ and R5/R6 would be required.

The inventions are distinct, each from the other because of the following reasons: They embrace compounds having different cores and/or with varying substitution permitted at both ends of the azine rings which are differently classified, require separate literature searches and would be expected to raise different issues of patentability- at the very least which is evidenced by art cited in applicants' international search report. Thus each of the groups can support a patent and the compounds are capable of additional uses other than that embraced herein.

**Art Unit: 1624**

**Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).**

**Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).**

**Any inquiry concerning this communication should be directed to Emily Bernhardt at telephone number (703) 308-4714.**

**A facsimile center has been established for Group 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier numbers for accessing the facsimile machine are (703) 308-4556 or (703) 305-3592.**

Application/Control Number: 09/928122

Page 5

Art Unit: 1624

*E Bernhardt*  
**EMILY BERNHARDT**

**PRIMARY EXAMINER**

**GROUP 1600**